

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

HERITAGE HOTELS & RESORTS
d/b/a HOTEL ENCANTO DE LAS
CRUCES,

Case No. 1:17-cv-01194

Plaintiff,

v.

AFFILIATED FM INSURANCE
COMPANY d/b/a FM GLOBAL,

Defendant.

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Affiliated FM Insurance Company d/b/a FM Global (hereinafter "AFM") hereby removes to this Court the state court action described below.

1. On October 3, 2017, an action was commenced in the Third Judicial District Court of Dona Ana County entitled *Heritage Hotels & Resorts d/b/a Hotel Encanto de Las Cruces v. Affiliated FM Insurance Company d/b/a FM Global* and assigned case number D-307-CV-2017-03164. A copy of the complaint is attached hereto as Exhibit A.

2. AFM was served a copy of the summons and complaint on November 8, 2017. A copy of the summons and return showing the November 8, 2017 service date is attached hereto as Exhibit B.

3. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332. Defendant AFM may remove this action to this Court pursuant to 28 U.S.C. § 1441(b). This is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and costs.

4. Plaintiff Heritage Hotels & Resorts d/b/a Hotel Encanto de Las Cruces is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico. *See* Exhibit A, ¶ 1.

5. Defendant AFM is a Rhode Island corporation with its principal place of business in Johnston, Rhode Island. *See* Exhibit A, ¶ 3.

6. The amount in controversy exceeds \$75,000. Although Plaintiff's complaint is silent as to the amount of damages sought, a removing defendant may present evidence, including affidavits from its employees, to establish that a plaintiff's claim exceeds \$75,000. *McPhail v. Deere & Co.*, 529 F.3d 947, 954-55 (10th Cir. 2008); *accord Aranda v. Foamex Int'l*, 884 F. Supp. 2d 1186, 1204-07 (D.N.M. 2012).

7. Attached as Exhibit C hereto is the Affidavit of Thanh Tien. Tien is a claims adjuster for AFM. Tien's affidavit establishes that more than \$1.7 million of Plaintiff's claimed losses resulting from the October 3, 2015 hail storm have

not been paid by AFM. Exhibit C, ¶ 4. Tien's affidavit also establishes that Plaintiff has submitted a sworn proof of loss statement to AFM claiming that its losses exceed \$2.9 million. Exhibit C, ¶ 5.

8. Plaintiff's complaint alleges that AFM breached the insurance contract by refusing to pay the entire amount of Plaintiff's claimed losses. *See, e.g.,* Exhibit A, ¶ 52. Plaintiff also alleges that AFMd engaged in unfair trade practices and that, as a result of AFM's conduct, Plaintiff is entitled to an award of up to three times its actual damages. Exhibit A, ¶¶ 57-60.

9. Based on the amount of the claim Plaintiff has submitted to AFM and Plaintiff's allegation that it is entitled to treble damages, the amount in controversy necessarily exceeds \$75,000. Consequently, this Court has original jurisdiction over this dispute pursuant to 28 U.S.C. § 1332.

10. This Removal is timely.

11. This Notice of Removal will be served on Plaintiff promptly after it is filed.

12. A Notice of Filing Removal, along with a true and correct copy of this Notice of Removal of Civil Action, will be filed with the Clerk of the Third Judicial District Court, County of Dona Ana, State of New Mexico, promptly after the filing of this Notice of Removal.

13. A Civil Cover Sheet is attached hereto as Exhibit D.

Dated: December 4, 2017

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